



# Town of Merrimack, New Hampshire

Community Development Department  
6 Baboosic Lake Road  
Town Hall - Lower level - East Wing

603 424-3531  
Fax 603 424-1408  
[www.merrimacknh.gov](http://www.merrimacknh.gov)

Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD VIRTUAL MEETING APPROVED MINUTES TUESDAY, APRIL 6, 2021 7:00 P.M.**

Due to the COVID-19 crisis, and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV and the Merrimack TV webpage (<http://www.merrimacktv.com>). Telephone access was available for members of the public wishing to speak during the Public Hearing or provide public comment. Also identified on the agenda was the opportunity for general public comment to be submitted leading up to the start of the meeting via email to [CommDev@MerrimackNH.Gov](mailto:CommDev@MerrimackNH.Gov).

Members of the Board and Town Staff were participating via Zoom. In accordance with RSA 91-A: 2 III, each member of the Board was asked to state, for the record, where they were, and who, if anyone was with them.

### **1. Call to Order**

Robert Best called the virtual meeting to order at 7:00 p.m. and read the procedures & processes for the virtual meeting. He appointed Nelson Disco to sit for Lynn Christensen.

Roll Call:

- Robert Best (Chair) stated he was present at home and alone in the room he was in.
- Alastair Millns (Vice Chair) arrived at 7:09 p.m. and stated he was present at home and alone in the room he was in.
- Neil Anketell stated he was present at home and alone in the room he was in.
- Councilor Bill Boyd (Ex-Officio) stated he was present at home and alone in the room he was in.
- Nelson Disco (Alternate) stated he was present at home and alone in the room he was in.
- Paul McLaughlin stated he was present at home and alone in the room he was in.

Members Absent: Lynn Christensen.

Planning and Zoning Administrator, Robert Price was attending alone from his office in Merrimack Town Hall.

### **2. Planning & Zoning Administrator's Report**

**The Board voted 5-0-0 by roll call vote to determine that the 385 DW Highway, LLC Waiver of Full Site Plan Review and Merrymac Christmas Tree Farm Site Plan applications are not of regional impact, on a motion made by Nelson Disco and seconded by Bill Boyd.**

*Alastair Millns joined the meeting at 7:09 p.m.*

3. **RCA Holdings, LLC (applicant) and Edgebrook Heights, LLC (owner)** – Continued review for consideration of final approval of a Site Plan to construct a 57,850 s.f. self-storage facility in accordance with the Edgebrook Heights mixed use Conditional Use Permit. The parcel is located at 4 Benning Court in the I-1 (Industrial) zone. Tax Map 2E, Lots 006-02 and 007. Case # PB 2021-08. **This item is continued from the March 2, 2021 Planning Board meeting.**

Robert Price prefaced the presentation by reminding the Board that the application was accepted as complete at the March 2, 2021 Planning Board meeting. He went on to state that there are outstanding waivers that need to be addressed by the applicant and acted upon by the Board, but staff is recommending conditional final approval.

The project was presented by Jason Lopez (Keach-Nordstrom Associates) and Gordon Welch (RCA Holdings, LLC). Mr. Lopez began by explaining that since the last meeting they presented the project to the Lower Merrimack River Local Advisory Committee (LMRLAC), received NH DOT signoff (no modifications needed), and have received feedback regarding the Alteration of Terrain (AOT) permit, which will be addressed soon. The sewer permit and approval from Pennichuck water are still pending. The applicant is looking for approval to complete the construction in phases. Phase one would include road and gravel work, the complete construction of five of the eight buildings (4 buildings along Benning Court and one building closest to the parking area) and the foundations for the last three buildings. As the market demand increases, phase two would encompass the vertical construction of the three remaining buildings. Mr. Lopez then read the two waiver request letters (both regarding lighting) into the record and the shared the lighting plan to demonstrate where the lighting is proposed and the impact of the waivers being requested. He also shared a plan from the lighting contractor that demonstrates the amount of lights that would be required to comply with the site plan regulations.

Chairman Best commented that since there will be residential units next door, less lights would probably be preferred as long as what is added provides enough lighting for the self-storage customers to safely maneuver around the facility. He then asked if the individual storage units will be lit and Mr. Lopez responded that there is not any interior electricity so the individual units are not lit. Mr. Welch added that the gate closes at 9:00 PM so no one will be allowed in after 9:00, however, once you are in, there is no limit to how long you can stay. Nelson Disco asked about an area in the back of the building that does not seem to get a lot of light based on the illustration shown. Mr. Lopez explained that it is a grassy area reserved for snow storage and there is no door access on that side of the building. Mr. Disco also asked about the angle of the parking and why it was chosen. Mr. Lopez explained that the parking spaces in questions are used for people to store their larger recreational vehicles and the proposed direction allowed him to increase the number of spaces by 2. Councilor Boyd asked where the lighting is in comparison to the storage unit doors and Mr. Lopez referred to a picture of a similar storage facility to demonstrate that the lights are between each roll up door.

**The Board voted 6-0-0 by roll call vote to grant waivers to Sections 3.13.e.3.i (regarding minimum illumination) and 3.13.e.3.iii (regarding U-Ratio for the illumination plan) of the Site Plan Regulations on a motion made by Bill Boyd and seconded by Neil Anketell.**

Public Comment was received via email from: Robert Simonds, SMC Management Corporation. A copy of this email is on file at the Community Development Department. Mr. Simonds also attended the virtual meeting and clarified some of the points in his email.

Chairman Best offered a reminder from the Community Development Director (Tim Thompson) that the Board should only consider creating conditions that comply with the site plan regulations. Councilor Boyd asked for clarification on which parcel Mr. Simonds represents and Robert Price indicated that Mr. Simonds represents SMC Management, which is the apartment complex that abuts the self-storage facility. Mr. Simonds voiced concerns about overnight parking, the aesthetics of the storage buildings and enforcing the regulations of the town. Chairman Best assured Mr. Simonds that the Planning Board takes the regulations seriously and asked if other Board members had comments or questions. Nelson Disco stated that he is also concerned with the aesthetics as it's in a high visibility location; however he was satisfied with the plans that were shared. He added that he is in favor of sites looking nice but nothing Mr. Simonds is requesting is enforceable by the regulations. However, it would be nice if the applicant could work with him to grant a few of his wishes. Paul McLaughlin asked for clarification on why the applicant is not in favor of a no overnight parking sign. Mr. Lopez commented that the Management Company that oversees the self-storage site will be responsible for ensuring no one is parking overnight unless they are in one of the 23 paid overnight storage spaces. They continued to discuss the overnight parking and the scenarios in which it might happen but ultimately Chairman Best concluded that it is not something that can be enforced by the Planning Board and suggested that Mr. Welch address it in his lease agreement.

Mr. Lopez shared the renderings of the building again and showed the view from both Daniel Webster Highway and Benning Court. Chairman Best asked if the wrought iron fence that is shown runs around the perimeter of the property and Mr. Lopez stated it does not and indicated on the drawing where it stops and is replaced with black vinyl chain-link fencing. He added that the type of fencing is not specifically called out in the town's site plan regulations. Chairman Best responded that although materials are not specifically mentioned in the regulations, this building is part of a CUP so there needs to be cohesiveness between the buildings. Mr. Lopez indicated that the cost of the fencing was the determining factor in not using the wrought iron around the entire site. He also referenced the trees that are being planted around the property and stated that once the trees mature they will block a lot of the fence anyway so they could not see putting the additional cost into a fence that eventually will not be seen. Mr. Welch also offered information about the roofing materials and color and indicated that he did agree to use the same shingles as the abutting property and has committed to the color scheme depicted in the renderings.

Mr. Lopez then shared the landscaping plan with the Board and they discussed it in detail. Chairman Best pointed out that the number of plantings listed does not match what is shown on the plan and Mr. Lopez responded that the numbers listed must be wrong and they will update the list to match what is shown. Councilor Boyd made the suggestion that some of the landscaping that is depicted along DW Highway be moved to Benning Court to make the business more visible from the main road (DW Highway) and to add more of a buffer for the abutting residential units. Chairman Best agreed that some additional shrubs would be beneficial along Benning Court but he is in favor of adding additional shrubs to the plan and not reallocating them from elsewhere. The conversation regarding landscaping continued and was wrapped up by Mr. Welch stating he would work with Mr. Lopez to add some additional shrubs between the maple trees along the Benning Court side of the parcel. Chairman Best agreed that the landscaping changes are something that can be handled with staff and do not need to go back in front of the Board.

**The Board voted 6-0-0 by roll call vote to grant conditional final approval on a motion made by Bill Boyd and seconded by Nelson Disco. The following conditions apply:**

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars.
2. The applicant shall obtain all required State approvals/permits as may be applicable note the approvals/permits on the plan and provide copies to the Community Development Department.
3. Any waivers granted (including Section and date granted) and/or any changes requested by the Planning Board shall be listed and fully described on the final plan, as applicable.
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel.
5. The applicant shall address any final comments from the town's peer review consultant, Fuss & O'Neill, as applicable.
6. The applicant shall address the following comment from the Fire Department: Fire Department water supplies (pressurized hydrants) are required. In keeping with the compliance of state fire codes, NFPA codes and continued practices with other subdivisions and residential complexes within the community the installation of Fire Hydrants on a minimum of an eight inch water main will be required with Fire Hydrants located every 500 feet along all roadways and no more than 250 feet to a driveway as calculated along the new roads starting at the nearest hydrant located on Daniel Webster Highway. Final drawings showing the locations of the fire hydrants must be submitted to the Fire Marshal's Office for approval.
7. The applicant shall address any forthcoming comments from Pennichuck Water Works, as applicable.
8. The applicant shall verify with the Public Works Department and Wastewater Division that they have addressed the following comments, as applicable:
  - a. This section of Daniel Webster Highway is under State of New Hampshire Department of Transportation Jurisdiction and Review. NH DOT permit will be required for any work done within the Right of Way.
  - b. The Design and construction of the sewer line shall conform to the Town of Merrimack Department of Public Works – Wastewater Treatment Facility – Sanitary Sewerage Engineering – Standards (SSES) as last revised. Also the NHDES State of New Hampshire Standards for Sewerage and Wastewater Treatment Facilities latest revision.
  - c. All applicable Sanitary Sewerage General Notes as outlined in SSES S2-04.8. shall be added to the sewer plans.
  - d. A note shall be added to the plans stating that under no circumstances shall stormwater, surface water, ground water, roof runoff, subsurface drainage, geothermal discharge or untreated industrial process water be discharged into any public sanitary sewer system. There shall be no footing drains connecting into the sewer system (SSES S3-01.1.e).
  - e. Sanitary Sewer Lateral Cleanouts shall be located at the property line and shall follow the guidelines in SSES S3-02.9. A cleanout detail shall be shown.

- f. The Lateral service per SSES S3-07 shall be a minimum of:
  - i. 6" pipe
  - ii. 6' of cover at the property line.
  - iii. A minimum slope of 2 percent.
  - iv. Shall have grade access to the surface with a cover.
  - v. A Detail and Profile of the Lateral Service shall be provided.
- g. Clearances to other utilities shall be per SSES Section S3-13 and shall be noted/detailed on the plans as applicable. The water service and sewer stub shall have at least 10 feet horizontal clearance and 18 inches vertical.
- h. Gravity Sewerage Pipe & Fitting materials shall conform to SSES S4-02 and Env-Wq
- i. 704.05 and shall be noted on the plans as follows:
- j. All PVC sewer pipe and fittings manufacture and installation shall meet or exceed the ASTM D3212-07(2013) recommended specifications, unless otherwise specified, and all installation shall be in strict compliance with the manufacturer's directions.
- k. ii. All pipes shall be clearly marked with the date of manufacture. All pipes shall be fabricated from a reference mark for proper spigot insertion.
- l. iii. Joint gaskets shall be fabricated from a compound of which the basic polymer shall be a synthetic rubber consisting of styrene, butadiene, polyisoprene or any combination thereof and shall meet the requirements of ASTM D-3212.
- m. A backwater valve shall be provided per section SSES S4-12. A detail provided on the plans and it shall be shown on the profile section. Construction shall be per section SSES S5-19. There shall be access to the unit from the surface.
- n. A note shall be added to the plans that all Sewer construction, inspections, testing, quality control shall conform to the methods and requirements under SSES S5.
- 9. The applicant shall address the following request made by the Planning Board during the public hearing:
  - a. Applicant shall add additional plantings among the six Glory Maple trees that are located along the self-storage side of Benning Court to be approved by the Community Development Department.
- 10. The applicant shall address the following Planning Staff Technical Comments:
  - a. Staff understands that the applicant may wish to construct the project in phases. The applicant shall update the notes on the site plan to indicate project phasing as required by the regulations (when phasing is proposed).

b. Please address the following on the site plan:

11. Provide all required boundary monuments as required by Section 3.02. The applicant's response letter indicates that "the monuments should be covered under the bond for the mixed use development," however that is not how the regulations work. The missing monuments at all corners, at the beginning and end of all curves and at all angle points must be part of the site plan approval.
12. A note should be added referencing the removal of the access point to the neighboring parcel (2E/6-1) on the site plan sheet that is to be recorded (there is information regarding this on the removals plan sheet, however staff recommends that a note on the site plan sheet be included).

**The following general and subsequent conditions are also placed on the approval:**

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department.
2. The applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor, registered/licensed in New Hampshire) to the Community Development Department prior to the issuance of a Certificate of Occupancy (or financial guarantee/phasing agreement shall be provided in a form and amount deemed appropriate (as necessary) by the Community Development Department should the project be approved in phases and occupancy of buildings is sought prior to the full completion of all improvements on the site).
3. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant.
4. Per the recommendation of the Conservation Commission:
  - a. Only low phosphate, slow release nitrogen fertilizers shall be used.
  - b. Spill kits shall be kept on site in the event of leaks from stored motor vehicles.
5. The applicant shall address any forthcoming comments from the Building Department, as related to building code compliance and permit application, as applicable (that are not deemed precedent conditions).
6. All buildings, including the storage buildings shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11) Plans shall be provided to the Fire Marshal for review and approval before a permit can be issued.
  - a. As the storage buildings are expected to be unheated garage style storage units with no interior electrical devices it has been determined that a dry type sprinkler system fed with a 4" Storz fire department connection would acceptably meet the intent of the Town code.

7. The buildings shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to the Fire Marshal for review and approval before a permit can be issued.

4. **Garrett Burbee (applicant) and 385 DW Highway, LLC (owner)** – Review for consideration of a Waiver of Full Site Plan Review to permit a mixed use development consisting of a single-family dwelling and contractor storage yard. The parcel is located at 385 Daniel Webster Highway in the C-1 (General Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 090. Case #PB2021-10.

Robert Price offered an overview of the project by advising the Board that a variance was granted in September 2020 to permit the mixed use & contractor yard on the property and the applicant is now seeking a waiver of full site plan from the Planning Board. He also noted that the applicant has been living and conducting his business at the property as he was not aware of the approval process. He has been cooperating with staff and working to get the proper approvals in place however, so enforcement action has not been taken. Mr. Price went on to explain that the plan that was submitted for the waiver request was a copy of an old plan from 1985 that Community Development had on file and is unfortunately, lacking in detail. He also advised the Board that there are two drawings shown on the plan, and the one at the top of the page is the one that contains Mr. Burbee's proposed updates so that is the one they should focus on.

Garrett Burbee, 385 DW Highway, LLC (applicant & owner) presented the project to the Board. Mr. Burbee explained to the Board that he is currently residing at and operating his HVAC business from the property at 385 DW Highway. He has no intentions of developing the site further and does not feel that it is his responsibility to develop a site plan now when none of the other occupants had to. Chairman Best asked Mr. Burbee how he intends to use the space for his business. Mr. Burbee explained that office space would be used for book-keeping and payroll and the outdoor space would be used to store the work trucks when they were not out at customer appointments or taken home by employees overnight. He added that they do not do fabrication or distribution at the site.

Chairman Best asked for an explanation on the storage shelter that is shown on the plan and Mr. Burbee explained that it is a storage shelter made out of a tarp material that he erected to store his personal belongings (snow blower, lawn mower, outdoor yard tools, etc.). Chairman Best asked if any supplies for the business are kept in the storage shelter and Mr. Burbee responded no, it is all personal use. Chairman Best asked Mr. Price if this is type of storage shelter is considered a structure and would it be something that is shown on a site plan. Mr. Price responded that traditionally structures of this kind are not permitted on a Commercial site. Neil Anketell asked for the dimensions of the shelter and Mr. Burbee responded that it is 20x30. Mr. Burbee reiterated that he constructed the storage shelter to store all of his personal equipment that would otherwise be left outside. Chairman Best explained that the Board is not questioning his intentions, they are just trying to determine how and if the storage shelter fits within the scope of the regulations.

The Board then discussed the parking and Mr. Burbee shared a sketch that was submitted by Cloud K9 when they received their waiver of full site plan showing that there are currently 8 parking spaces at the site. Mr. Price confirmed that when the parcel was used as a dry cleaning business in 2001, they had expanded the parking lot. Neil Anketell asked if customers ever visit the office to schedule an appointment or make a payment and Mr. Burbee indicated that it could happen but he has been running his business for 20 years and it has not happened yet.

Chairman Best ran through a list of items that a full site plan typically covers (lighting, drainage, landscaping, etc.) and mentioned that one of the abutters had voiced concerns about drainage issues on his property. Nelson Disco commented that he would like to see the applicant submit a written statement as to his intentions of the property so they know exactly what they are approving. Mr. Burbee indicated that he does have a five year plan for his business but it does not include expansion at the current property because it is not large enough. Chairman Best agreed with Mr. Disco's assessment that the Board needs to see something in writing as to the intentions of the site. He also advised Mr. Burbee that although he can appreciate that the storage shelter was erected to save money, it is not something they can approve for a commercial site. Councilor Boyd voiced his support for Mr. Disco's suggestion about getting more information in writing from the applicant but does not feel a full engineered site plan is necessary. Paul McLaughlin noted that staff has only received department comments from the Police Department and suggested that they hold off on making a determination until they have gotten more feedback from other departments. The Board discussed the pros and cons of the various motions for continuing the project and ultimately a motion was made to continue both the acceptance of the application and the approval.

**The Board voted 6-0-0 by roll call vote to continue the application's acceptance and public hearing to June 1, 2021 on a motion made by Bill Boyd and seconded by Paul McLaughlin.**

5. **Merrymac Christmas Tree Farm, LLC (applicant) and Linda Raymond (owner)** - Review for acceptance and consideration of a Site Plan to permit a Christmas Tree Farm and supporting accessory use/infrastructure. The parcels are located at 105 and 107 Turkey Hill Road in the R-1 (Residential, by soils), and Aquifer Conservation Districts. Tax Map 4C, Lots 229 and 229-01. Case #PB2021-11.

Robert Price prefaced the presentation by reminding the Board that the project was previously heard by them as a conceptual plan and the applicant has now submitted the application for project approval.

Matt Peterson, (Keach-Nordstrom Associates) and Derek Gagnon (applicant) were present to discuss the project. Mr. Peterson began by showing an aerial view of the property and providing some history of the project including the fact that a variance was granted by the Zoning Board in January 2021. He then shared the site plan and discussed the original access easement that was proposed during the subdivision process and explained that since that easement has not been completed yet, they are now proposing a new one. The new easement will encompass access, use and utilities. Mr. Peterson continued by showing the new location of the driveway entrance which at the recommendation of the Board, was moved to be across from Bancroft Street. The proposed gravel parking lot was also discussed along with the fact that there is very little information on parking requirements for Christmas tree farms so a parking waiver has been requested. Mr. Peterson then shared the location of the proposed snack shack and port-a-potties and discussed lighting for the site. He indicated that he was considering the use of free standing lights that can be rented for the short time frame that the farm will be open for the season rather than install permanent lights. He referenced a similar business in Litchfield that also only operates for a few months of the year that uses these lights but ultimately concluded that he is looking for feedback from the Board. He continued his presentation by sharing the business overview that was given to the Conservation Commission and briefly discussing the three waivers that were submitted for the project (traffic study, lighting, and internal landscaping). He shared that the business will be using natural practices free of pesticides or anything that will harm the water, land or air. For the first seven years as the 600 +/- trees are growing onsite, the owners will have trees shipped



in to sell. Mr. Peterson demonstrated the location of the tree sales on the site plan so that the Board could get an idea of the layout. He then shared pictures of a tree farm in Litchfield to show what it looks like during the off-season.

Chairman Best expressed concerns with traffic because the tree farm that was referenced in Litchfield gets extremely busy on weekends during Christmas to the point that they need a Police Officer to direct traffic. He suggested that Mr. Peterson have a plan in place on dealing with traffic. He also asked about the lighting plan for the temporary lights and indicated that the Board will need to see them depicted on the plan so they can get an idea as to how many there will be and where they will be placed. Mr. Peterson responded that they will discuss their needs with some lighting companies and put a plan in place, they wanted to make sure the Board was ok with the proposal of temporary lighting before moving forward. Chairman Best agreed that temporary lights make sense since 11 months of the year, the site will not be utilized but he does want to make sure the neighbors are considered.

Chairman Best asked if they plan to recycle Christmas trees too once Christmas is over and Mr. Gagnon confirmed that they will be offering this service. There was a brief discussion about the offerings of the snack shack and whether or not additional permitting will be required. Chairman Best then indicated that he thinks the changes to the easement make sense and suggested a lot line adjustment. Robert Price interjected to comment that a lot line adjustment would be difficult to obtain and additional variances would be needed. Mr. Peterson added that Mr. Gagnon would like to eventually purchase the house and lot at 107 Turkey Hill Road but that would be in the future.

Chairman Best also asked if any trailers or storage units would be placed on site and if the Christmas trees would be displayed in tents. Mr. Peterson confirmed that there would be no trailers, storage units or tents used on the site. Neil Anketell asked if a lighting plan is being considered for when the trees are fully grown on the site and can be cut down and if there are any plans to have electricity wired in the fields for any other reason. Mr. Peterson responded that the hours for tree cutting will be limited to daylight hours only and there are no plans to add electricity in the fields. Nelson Disco asked about the access road to the fields and where the wetlands lie so Mr. Peterson referenced the plan to show that there is a break in the wetlands at the spot where the access road crosses into the back of the property. Mr. Disco then asked about the grid lines on one of the plans, why the access road drops off and if the site has been tested for ledge. Mr. Peterson responded that the lines indicate the fields where the trees will be grown and they have not been mapped out yet so the access road will depend on how the trees are planted. As for the ledge, they have done test pits on the site and Mr. Gagnon has had several soil samples taken and they have seen no problems with ledge.

**The Board voted 6-0-0 by roll call vote to accept the application for review on a motion made by Alastair Millns and seconded by Bill Boyd.**

Chairman Best reminded the Board that staff has recommended a continuation to allow time for peer review comments to be received. Councilor Boyd recommended that the Board hear public comments next.

Public Comment was received via email from: Robert & Debbra Uttero, 5 Acacia Street. A copy of this email is on file at the Community Development Department.

Mr. Peterson responded to the Uttero's comments by advising the Board that the owners do intend to use organic materials to grow and care for the trees. He also added that they do not intend to leave a wooded buffer between the tree farm and the neighborhood behind it but they are also not erecting any buildings and will be utilizing all of the land to grow the

Christmas trees. Neil Anketell asked for clarification on whether or not the intention is to clear cut all of the land and recalled that it was discussed during the concept but was unsure of the response that was given. Robert Price referenced the minutes from that meeting and recited what was discussed which did not include an answer as to how much land would be clear cut and if a buffer would be kept. Chairman Best asked Mr. Price for clarification as to whether or not a buffer is required for this type of use and Mr. Price indicated that a buffer is not required. Paul Mclaughlin expressed concerns about the owner cutting trees down on someone else's land and Mr. Peterson responded that the bounds are in place and the site will be flagged before any cutting is done. Mr. Anketell also clarified that the intent of his question from the previous meeting was to get an idea of what the neighbors will see when they look out their windows in the future. Chairman Best responded by reminding the Board that they cannot make decisions based on a neighbors view changing. Councilor Boyd asked Mr. Peterson to address the irrigation question and Mr. Gagnon replied by stating that for the time being they will rely on mother nature and may eventually add a rain water collection unit to assist during droughts. Chairman Best reminded the Board that they have no jurisdiction on irrigation and it would be up to the owner to manage how it is handled.

**The Board voted 6-0-0 by roll call vote to continue the public hearing to May 4, 2021 on a motion made by Bill Boyd and seconded by Neil Anketell.**

- 6. John Flatley Company (applicant) & Gilbert Crossing, LLC & John J. Flatley (owners) –** Review for consideration of an amendment to a previously approved Mixed Use Development Conditional Use Permit to permit 96 additional multi-family residential units. The parcels are located at 645, 673, 685, 703 & 707 Daniel Webster Highway and 5 Gilbert Drive in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05, 003-06 and 003-07. Case # PB2021-12.

*Robert Best recused himself from this case. Alastair Millns assumed the Chair.*

Robert Price prefaced the project by reminding the Board that this is a request to amend the CUP and is not a site plan application.

The Applicant was represented by: Chad Branon, (Fieldstone Land Consultants), Kevin Walker (John Flatley Company), Mark Fougere, (Fougere Planning & Development), and Giles Ham (Vanasse and Associates). Chad Branon began by providing a history of both the property in question and the Conditional use permit that was originally granted in September 2015. He then shared a rendering of the Flatley properties along DW Highway to demonstrate where the various projects that were approved as part of the CUP are taking place. The proposed change to the CUP adds 2 additional buildings (96 units) to the site and increases the area from 31.3 acres of residential space to 32.6 acres. The change also has a minimal impact on the commercial retail space as it will be reduced from 25.8 acres to 24.3 to use the land for the new apartment buildings.

Nelson Disco questioned the Fiscal Analysis that was submitted with the project, specifically he wanted to know why it was conducted using 104 units if 96 is what is being requested and why examples from other towns were used in the analysis. Mark Fougere responded by explaining that when he conducts an analysis, he tries to use similar developments and although he did use some from out of town, he incorporated a good amount from within Merrimack. Mr. Disco also expressed concerns about the age of the data as some of the employees referenced in the analysis are no longer with the town. Mr. Fougere explained that because this change was specific to the residential units, he did not find it necessary to meet with the Police and Fire Chiefs again. Mr. Disco stated that he feels that Chief Duke and Chief Levesque should be consulted and the plan should be updated to reflect their views.

Councilor Boyd agreed with Mr. Disco's stance on having the current Police and Fire Chiefs weigh in on the project and then asked if the site has been tested for PFAS and other contaminants. Kevin Walker responded that the location of the proposed buildings has been tested and added that they are in the process of testing the entire 150 acres of land now. He continued by explaining that the soil management plan that was in place for the previously approved buildings is still valid and added that they did not hit any ground water during the construction of those buildings. Councilor Boyd then asked if the addition of the new buildings is due to a need for more housing brought on by the pandemic. Mr. Walker responded that the proposal is based off of demand. The first five buildings filled up very quickly and they are constantly fielding phone calls about availability. He added that the purpose of the proposal is not to decrease the retail component but to fill the need for additional housing. Councilor Boyd expressed that he is concerned with the proposal because it diminishes the spirit of the CUP that was granted. Mr. Walker reiterated that the intent of the proposal was not to eliminate retail space and added that they tried to avoid it when drawing up the plans for the new buildings. He also commented that there may be room elsewhere to incorporate it back in. Mr. Branon shared the renderings of the properties to demonstrate where an additional retail unit could be added to keep the existing retail footprint intact if that is something that the Board wants to see.

Nelson Disco asked if additional parking has been added to accommodate the new buildings and Mr. Branon responded that some additional parking has been added however the site plan regulations require 461 spaces and they have provided 563.

#### Public Comment

Ashely Tenhave (75 Shelburne Road) expressed concerns with the accuracy of the traffic study because it was conducted prior to school starting and during a pandemic. She stated that adding two additional buildings will just make a bad traffic situation worse. Ms. Tenhave went on to express additional concerns with the added burden to our Fire and Police departments, adding that the town already has had to seek assistance from neighboring towns on occasion and adding more residential units will just make it worse.

Mark DesGrosseilliers (12 Lantern Lane) walked through the history of the CUP approvals to point out that there have been five buildings constructed already with none of the commercial buildings being completed. He went on to explain that the 5<sup>th</sup> building really destroyed every view from his property and although it may be within the requirements, it is just too close to his entire neighborhood that has been there for a long time. He stated that too many trees were cut down during the construction of the 5<sup>th</sup> building and they lost a lot of landscaped buffer that was once there. He spoke with Kevin Walker and he agreed to add some fast growing greenery back into the area but as of now, his only view is a very large building. He encouraged the developer to consider the neighbors when deciding on the placement of the new buildings because the placement of the 5<sup>th</sup> building really has had a negative impact on him and his neighbors and he would like the Board to add something to the plan about reinstituting a buffer for his neighborhood. He concluded his comments by discussing the traffic on DW Highway. Although it's not indicated in the traffic analysis, the traffic in that area is dreadful in the morning and again during rush hour.

Katharine Hodge (44 Belmont Drive) expressed concerns that the fiscal impact is outdated and needs to be updated. She also mentioned that she agrees with Councilor Boyd's concerns on the diminished spirit of the CUP that was granted because the parcel has gone from 4 apartment buildings to 5 and now they want 2 more. Ms. Hodge also added that she agrees with the earlier remarks about the traffic analysis. It was conducted at 2:00 pm in August,

during a pandemic. The time of the study does nothing to capture what is really felt by residents during peak travel times. She continued her comments by questioning the retail component of the mixed use development, stating that there are empty retail units all over town so she is fearful that this is not going to get filled and will remain vacant like the others. She also questioned Mr. Walker's earlier comments about soil testing and stated that she spoke with Jeffrey Marks at DES and he indicated no testing has been done and none is scheduled to be done.

Mr. Walker responded by reiterating that the soil management plan is on file with DES and they are in the process of finalizing the testing plan now. He also offered up his email address so that he can share his correspondence with DES with any concerned abutters. He addressed the retail concerns by stating that Flatley has a very successful retail establishment in Nashua and they are confident they will get tenants for the Merrimack space as well.

Mr. Branon added that they have been and will continue to work with DES on all aspects of the plan that involve them and it has definitely been a collaborative effort. He also emphasized that there has been concerns about the spirit of the CUP but they are actively working on the industrial flex space now.

Kathryn Poirier (11 Kimberly Drive, Unit 21) echoed the concerns of previous callers indicating that a buffer is needed for the adjacent neighborhood (Lantern and Hickory Lanes), adding a strip mall during a pandemic is only going to lead to vacant buildings along a major artery which is going to make Merrimack look like a ghost town. She also touched on the impact to the Police and Fire Departments stating that Merrimack is already asking for mutual aid from other towns and adding more buildings is going to make it worse. Ms. Poirier also requested that the 5<sup>th</sup> building be added to the plan as it was not depicted on the plan that was submitted for this amendment.

Public Comment was also received via letter from: Maureen LeBlanc, 17 Kimberly Drive, Unit 23. A copy of this letter is on file at the Community Development Department.

Chairman Millns explained that towns are always going to need some mutual aid from neighboring towns because the police and fire departments do not staff to worse case scenarios.

Giles Ham addressed the traffic concerns by explaining that they completed the necessary traffic analysis that is required for this project and the two additional buildings will only generate 33 additional AM peak trips and 43 additional PM peak trips, which as staff agrees, is a minimal impact given volumes associated with DW Highway. Mr. Fougere addressed the fiscal analysis again by clarifying that the information was last updated in 2021, and the only thing that was not done, was soliciting feedback from the current police and fire chiefs, which will he will get done soon. Councilor Boyd asked why the trip total in the analysis only totals 76 when there are 96 units being proposed. Mr. Ham explained that the projections are for peak hours only (AM and PM) and not everyone leaves or arrives home at the same time.

Neil Anketell questioned why the Board should approve two additional residential buildings when none of the commercial has even been started yet. Mr. Walker addressed his concerns by explaining that they have submitted a site plan for the 100,000 square foot industrial flex building and anticipate that project being well under way before site plans are finalized for the new residential buildings. Additional discussions took place regarding the industrial flex buildings and their role within the CUP and Mr. Price confirmed that the industrial component is in fact part of the CUP phasing and if the two additional buildings are approved, it will be a condition of the approval that the industrial buildings be constructed first.

Chairman Millns called attention to the time and asked if any of the Board members are ready to make a motion. Mr. Disco recommended a continuance so that the applicant can address some of the issues raised before making a decision.

**The Board voted 4-1-0 by roll call vote to continue the public hearing to April 20, 2021 on a motion made by Nelson Disco and seconded by Neil Anketell. Bill Boyd voted in opposition.**

*Chairman Best rejoined the meeting and resumed as chair.*

**6. Discussion/possible action regarding other items of concern**

Chairman Best reminded everyone that the Planning Board as well as several other town boards are looking for volunteers.

Nelson Disco asked for an update on Merrimack Park Place. Mr. Price explained that the applicant went back to the Zoning Board to seek a new variance because they are proposing to double the density that was originally requested under the original variance. The variance was granted so the Planning Board will be seeing an amended Conditional Use Permit and site plan for that in the future.

**7. Approval of Minutes — March 16, 2021**

**The Board voted 4-0-2 by roll call vote to approve the minutes of March 16, 2021 as amended on a motion made by Alastair Millns and seconded by Bill Boyd. Paul McLaughlin and Neil Anketell abstained.**

**8. Adjourn**

**The Board voted 6-0-0 by roll call vote to adjourn at 11:10 p.m. on a motion made by Paul McLaughlin and seconded by Bill Boyd.**